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BEFORE THE ARIZONA CORPORATION CC

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Arizona Corporation Commission

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COMMISSIONERS

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AZ CORP COMMISSION
DOCKET CONTROL

IN THE MATTER OF THE APPLICATION OF
UNION PACIFIC RAILROAD COMPANY FOR
APPROVAL TO INSTALL NEW CONSTANT
WARNING TIME DEVICE AT CITY OF TEMPE
QUIET ZONE PROJECT - 13TH ST HIGHWAY

DOCKET NO. RR-03639A-11-0039

**STAFF'S RESPONSE TO MOTION
TO WITHDRAW APPLICATION**

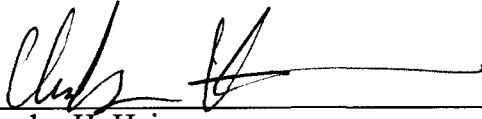
On January 25, 2011, the City of Tempe ("City") filed an application to obtain permission for the Union Pacific Railroad ("Railroad") to upgrade a crossing at 13th Street with the addition of Constant Warning Time ("CWT") circuitry. The application was part of a larger project to implement a Quiet Zone that included ten crossings including the 13th Street crossing that is the subject of the application. Arizona Corporation Commission ("Commission") Railroad Safety Section Staff ("Staff") filed its Staff Report and Proposed Order recommending approval of the application on February 14, 2011. On May 17, 2011, the City filed a request to stay Commission consideration of the application pending determination whether the Federal Railroad Administration ("FRA") would grant a waiver of the requirement that necessitated installation of the requested upgrades to the crossing. On December 22, 2011, the City filed a motion to withdraw its application. The basis for the motion was that installation of the CWT circuitry at 13th Street would not be reasonably practical. The City further indicated that the FRA concurred in the City's assessment that the crossing would have an appropriate degree of safety necessary for a Quiet Zone without upgrading to CWT circuitry at the crossing.

Staff has reviewed the City's motion to withdraw the application to upgrade the 13th Street crossing. Staff has confirmed that the FRA concurs in the City's assessment. Attached as Exhibit 1 is a copy of FRA's response to the City's waiver request. According to FRA, a waiver of the requirement to install CWT circuitry is not necessary under the circumstances because the rule is expressly conditioned on the installation of CWT circuitry being reasonably practical. FRA has

1 determined that installing CWT circuitry at the 13th Street crossing would not be reasonably
2 practical. Therefore, withdrawal of the application will not impede the City's efforts to implement
3 the Quiet Zone.

4 Consequently, Staff does not object to the City's motion to withdraw its application to
5 upgrade the 13th Street crossing.

6 RESPECTFULLY SUBMITTED this 24th day of January, 2012.

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8 
9 Charles H. Hains
10 Attorney, Legal Division
11 Arizona Corporation Commission
12 1200 West Washington Street
13 Phoenix, Arizona 85007
14 (602) 542-3402

12 **Original and thirteen (13) copies of**
13 **the foregoing filed this 24th day of**
14 **January, 2012, with:**

14 Docket Control
15 Arizona Corporation Commission
16 1200 West Washington Street
17 Phoenix, Arizona 85007

17 **Copy of the foregoing mailed this**
18 **24th day of January, 2012, to:**

19 Mr. Robert Yabes
20 Principal Planner
21 City of Tempe
22 31 East 5th St., Garden Level
23 P.O. Box 5002
24 Tempe, AZ 85280

23 Mr. Andrew Ching
24 Tempe City Attorney
25 21 E. Sixth Street, Suite 201
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25 Mr. Jeff Kaluga
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15 Monica A. Marty

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EXHIBIT 1



U.S. Department
of Transportation

**Federal Railroad
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

DEC 9 2011

Mr. Jeff Kulaga
Assistant City Manager
City of Tempe
P.O. Box 5002
Tempe, AZ 85280

Re: Docket Number FRA-2011-0045

Dear Mr. Kulaga:

The Federal Railroad Administration (FRA) has reviewed the waiver petition submitted by the City of Tempe (City), AZ, dated May 16, 2011. The City requested a permanent waiver from the requirement for the installation of Constant Warning Time (CWT) train detection on the Union Pacific Railroad's (UP) industrial lead track at the 13th Street highway-rail grade crossing (DOT #741564E). The City is proposing to establish a new quiet zone consisting of 10 public highway-rail grade crossings, one of which is 13th Street. The City believes that the installation of CWT on the lead track is not reasonably practical.

FRA has determined that a waiver is not necessary in this instance. Title 49 Code of Federal Regulations Section 222.35(b)(1) reads as follows:

Each public highway-rail grade crossing in a New Quiet Zone established under this part must be equipped, no later than the quiet zone implementation date, with active grade crossing warning devices comprising both flashing lights and gates which control traffic over the crossing and that conform to the standards contained in the MUTCD. Such warning devices shall be equipped with constant warning time devices, if reasonably practical, and power-out indicators.

The regulation requires the use of CWT when it is "reasonably practical," and thus allows the use of other methods of train detection when the use of CWT is not reasonably practical. Therefore, a waiver is not necessary because the use of non-CWT train detection is permitted in the regulation.

The 13th Street crossing is equipped with automatic warning devices consisting of flashing lights, gates, and a bell. There are two tracks at the crossing; one track is the main track, which is equipped with CWT. The other track is the lead track, which is equipped with an

alternating current-direct current (AC-DC) "Ring 10" track circuitry. The maximum authorized speed on the lead track is 20 mph, with most movements traversing the crossing at 10 mph or less. Stop signs are posted in both directions for train movements approaching the crossing on the lead track, indicating that trains must stop and not proceed into the crossing until the crossing gates are fully horizontal. Trains entering the lead train from the main track must stop approximately 300 feet in approach to the crossing, line the switch to proceed south through the crossing, and stop and remove the derail located approximately 400 feet south of the crossing before proceeding south. Trains re-entering the main track from the lead train must come to a complete stop short of the derail, remove the derail, line the switch for the main track, and then proceed across the crossing at speeds less than 10 mph.

In a July 20, 2011, letter, the Arizona Corporation Commission (ACC) (responsible for highway-rail grade crossing safety in the State) stated that CWT on the lead train was not reasonably practical nor necessary to adequately maintain the public's safety. ACC noted the physical and operating characteristics of the crossing in its letter, and stated that the existing AC-DC "Ring 10" track circuitry on the lead train provides a safe and reliable train detection system.

FRA has determined that CWT is not reasonably practical for the lead train that crosses 13th Street. Given the fact that the typical train speed on the lead train is 10 mph, and the necessity for train movements from both directions to stop in the near vicinity of the crossing, CWT would not provide any appreciable safety benefit. In fact, the low train speed and the necessity for train movements to stop and then begin to move through the crossing may result in CWT not functioning properly, and provide a less reliable activation of the warning devices. A CWT device does not have to be installed on the lead train at 13th Street as a condition for the establishment of a new quiet zone.

Please feel free to contact Mr. Ron Ries, Staff Director-Highway-Rail Crossing and Trespasser Programs Division, at (202) 493-6285 if you have any questions.

Sincerely,



Robert C. Lauby
Deputy Associate Administrator
for Regulatory and Legislative Operations

cc: Mr. Charlie Meyer, City of Tempe
Mr. Robert Yabes, City of Tempe
Mr. Gregg Kent, City of Tempe
Mr. Brian Lehman, ACC
Mr. David Raber, ACC
Mr. Robert Travis, Arizona Department of Transportation
Mr. Scott Friedson, Arizona Department of Transportation
Engineering Department, Union Pacific Railroad
Mr. Alexander Popovici, Union Pacific Railroad
Mr. Freddy Cheung, Union Pacific Railroad
Mr. Luis Heredia, Union Pacific Railroad